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K

File No. 0 Electricity/41

Legal Department.

A BRANCH

Subject:— Opinions under the Indian Electricity Act, 1910.

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File No. 0 Electricity/41

C O N T E N T S .

Legal Department File No. 0. Electricity /1941.

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V.v.k. 1/6/56/.

Office of the R.L.A.

It is true that under the second proviso to clause XI of the Schedule to the Indian Electricity Act, 1910, the maximum rates fixed after reference to the Advisory Board cannot be changed until the expiration of 5 years . Under section 3(2)(f) of the Act the provisions contained in the Schedule are to be deemed to be incorporated with and to form part of a license. Under section 4(3) Government can on the application or with the consent of a licensee make any alterations or amendments in the terms and conditions of a license including the provisions specified in section 3(2)(f). Under section 4(3) it is , therefore, open to Government to make alterations in the maximum rates, although such rates may have been fixed on the recommendation of the Advisory Board and althought a period of 5 years may not have expired after the fixing of such rates. The view taken by A(F) is correct.

Id/- P.M.L.
dt/- 7/1/

Remembrancer of Legal Affairs.

No. 13- Confl,
7/1/41/

V.VK. 30/5/58/ 50.

R.I.No. 267
8/1/41/

Submitted

By G.R.P.W.D. No. 2482/27 dated 29-4-29 Govt. granted sanction to Mr. M.A. Bhagwati under section 28(1) of the Indian Electricity Act, 1910, to supply energy in the Mulji Jetha Market on the terms and conditions specified in Govt. Notification No. 2482/27 dated 29-4-1929. It is now reported that in spite of the sanction the work of supplying energy is being managed by theNew Piece Goods Bazaar Co. Ltd. and Mr. Bhagwati is acting as the Managing Agent. The questionraised for the consideration of the R.L.A. is whether it is necessary to revoke thesanction.

2. Secy. P.W.D. in his note dated 6/1/41/ sates that it hardly seems necessary to revoke the licensee and that Govt. can inform Mr. Bhagwati. that the sanction will not berenewed after April 1941. This course does not appear o be legally feasible. The sanction granted by G.N. P.W.D. No. 2482/27 dated 29/4/1929 has not been granted for any fixed period. Condition No. 5 inthat Notification provides that thee sanction may be revoked at any time for breach of any of the conditions of the sanction. It may also be revoked by Govt. for thier own reasons at any time ater the expiration of a period of 12 years from the date of the sanction upon giving at least 6 calendar months' notice in writing and upin the

expira*ion of such notice Mr. Bhagwati shall ceaseto supply ele-trical energy. If Govt. is satisfied that Mr. Bhagwati has committed a breach of any of the conditions, the sanction can be revoked under the former part of Condition No. 5 . If on the other hand Govt. does not desire to exercise the power thereunder, and wishes to revoke it for its own reasons, a notice in writing of a t leas six calender months will have to be given to him under the latter part of that clause. This notice it appears, cannot be given now, but on the expiration of a period of 12 ears from the date of he grant of the sanction i.e. on or af er 29-4-1941. In any case, the sanction will have to be revoked under condition No. 5

Sd/-P.S. Nadkarni
dt/- 23/1/41/

A.S. I agree

Id/- N.T.K.
dt/- 27/1/

A.L.R. The P.W.D. office would H.L.A. only to scrutinize the notice at p. 27ante but the Secy P.W.D. wished H.L.A. to advice on the point raised by him in his note dated 6/1/41/at p. 26ante.

If does not appear that any question of revocation of the licence (presumably to carry on business as a licensed electrical constractor) is involved in this case. Since the sanc ion granted by G.R.P.W.D. No. 2482/27 ated 29/4/1929 is not limited to any fixed period with provision for renewal thereafter it will not be sufficient sufficient nearly to informing mr. M.A. Bhagavati that the action will not be renewed after April 1941 and the revocation of the sanction decided upon at p. 25 ante will have to be effected in conformity with the terms of condition 5 specified in the notification by which the sanction was granted A-A avove.

Id/-
dt/- 7/2/41/.

Id/- P.N.M.
dt/-18/2/ 41/

V.VK. 30/5/56/ 50.

Office of the R.L.A.

It does not appear that any question of revocation xxxx of the licence (presumably to carry on business as a leceased electrical contractor) is involved in this case. Since the sanction granted by Government Notification, Public Works Department, No. 2482/27 , dated the 29th April 1929, is not limited to any fixed period with provision for renewal thereafter, it will not be sufficient merely to inform Mr. M.A. Bhagawati that the sanction will not be renewed after April 1941 and the revocation of the sanction decided upon at p. 25 ante, will have to be effected in conformity with the terms of condition 5 specified in the notification by which the sanctinon was granted. If Government is satisfied that Mr. Bhagavati has committed a xxxxxx breach of any of the conditions, the sanction can be revoked under the former part of condition No. 5 . If on the other hand Government does not desire to exercise the power thereundern, and wishes to revoke it for its own reasons, a notice in writing of at least six calender months will have to be given to him under the latter part of that condition.

Id/- P.N.M.
dt/- 12/2/

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 1350 , dated the 13th February 1941.

V.VK. 30/5/56/ SC.

Office of the R.L.A.

The question on which the opinion of the Remembrancer of Legal Affairs is sought is whether the Kanebennur Municipality can levy rent from the licensee in respect of electric poles fixed on municipal road-sides (page 3 ante).

2. The answer to the above question is in the negative. Attention is invited to the provisions of section 12 of the Indian Electricity Act, 1910, particularly to sub-sections (1). (2) and (3). The poles in question will presumably be fixed under the powers of the licensee to lay down and place electric supply-lines and other works and to do all other acts necessary for the due supply of energy under section12(1)(c) and (e). Section 12(3) refers to the levy of annual rent but that sub-section relates to ordes under sub-section (2) which, however, excludes from its own purview land didicated to public use. The result is that in the case ofland dedicated to public use, such as the street land or road sides, for exercising his powers under section 12(1) the licensee does not require any consent of the local authority or of the owner or occupier concerned (as would have been the case under section 12(2) had the land in question not been dedicated to public use) and no question of any payment of compensation or of any annual rent (as would have been the case if sub-sections (2) and (3) of section 12 had been applicable) arises in such cases. Since the poles in question will be fixed in exercised of his statutory powers by the licensee and the relavent statutory provision while expressly reforring o the payment of rent in other cases does not make any similar provision when the licensee lays down or places any electric supply-line or other work on, over or under any land dedicated to public use, the Ranebehhur Municipality will not, in law, be entitled to levy aney rent from the licensee for the use of the street land in fixing these poles (see R.L.A.'s No. 0. Telegraphs I/28, dated 20th January 1930 and No. 2813 , dated 21st May 1932).

3. A fee of Rs. 80/- may be charged for this opinion.

Id/- P.N.M.
dt/- 12/2/

Remembrancer of Legal Affairs.

U.R. to C.D. No. 1388, dated the 14th February 1941.

V.VK. 30[illegible]/5/56/ 50.

Office of the R.L.A.

Mr. Usufale A. Bakerbhai was granted the Kapadwanj Electric License 1933, to supply energy to the area within the limits of the Kapadvanj Municipality. It was reported to Government from time to time that the financial condition of the licensee was not good and that his undertaking was not being managed properly. The licensee was convicted and fined in 1937 for not supplying continuous energy. It is now reported that the licensee has discontinued supply form the 2nd week of December 1940. Government therefore propose to revoke the licence granted to the licensee. The Remembrancer of Legal Affairs is requested to advise whether the draft notification at page 79 ante revoking the licence and two draft notices at pages 81-83 ante are in order.

3. In the draft notification and notice it is stated that the licensee has failed to comply with requirements of clause 5(1) of the license read with clause VI(1) of the Schedule to the Indian Electricity Act, 1910. The refe ence to clause 5(1) of the License is not appropriate in the draft notification and draft notice for thefowwowing reasons. Failure to make a constant supply of enery cannot be said to be a breach of clause 5(1) of the License. Because the sub-clause (1) in question engoins upon the licensee to execute works wi hin a period of 2 years from the commencement of the License. It refers to the continuous supply of energy in an indirect way. Schedule VI(1) of the Indian Electricity Act, however, specifically imposes an obligation upon the licensee to sup ply constant supply of energy to the owners or occupiers of thepremises. Ther refeerence to clause 5(1) of the License may be delated form the draft notification and the notice. In addition to the licensee 's failure to supply energy to the consumers he also appears to have made default in coplying with the provisions of section 11 of theAct which imposes an obligation upon him to prepare and render a s atement of the accounts of his under - taking in thmanner prescribed by Government . If, wo that

will be an additional ground for revoking the license under section 4(1) of the Act. If the Public Works Department has no objection that gound may also be taken upin in support revocation of the licensg . The draft notification and draft notices have been revised accordingly and are leagally in order. With reference to paragraph 4 of P.W.D. note of 30-1-1941 at page 76 ante the period of 3 months suggested in that note appears to be reasobable.

3. As regards forgeiture of the security deposit attention is invited to clause I(e) in the Schedule to the Indian Electricity Act, 1910, which requires that thesum deposited or secured by the licensee under the provisions of that clause shall be repaid orreleased to him on the comolep tion of the works or at such earlier date or dated and by suchinstalments as may be approved by theProvincial Government . It appears that in this case the licensee has already executed all the requisite works and is therefore entitled to the return of the security (see page 71 ante).There is therefore now no ground on which the security in question ca n be forfeited in accordance with the provisions of clause I of the Schdule.

Id/-P.N.M.
dt/- 17/2/

Remembrancer ofLegal Affairs.

U.R. to P.W.D. No., 1518 , dated the 18th February 1941.

V.VK. 30/5/50/ 5C.

Submitted.

Attention is invited to the letter from the Electrical Engineer to Govt. at p. 31 ante. It appears that the Provl. Govt. has asked the Advisory Board constituted under section 35 of the Indian Electricity Act, 1910,(IX of 1910), to advise what alterations, if any, should be made in the maxima rates for the supply of Electrical energy fixed by the Sholapur Electric License, 1921. The alterations suggested by the Board in the maxima rates will to found in the table at p. 29 ante. One of the recommendations that the Board proposes to make is that the licensee should be authorised to charge interest at the rate of 6 % on all accounts not settled within 30 days from the date of presentation of the bills in respect of energy consumed by lights and fans. The question raised for the consideration of the H.L.A. is whether the above recommendation would be legally in order.

2. Licenses for the supply of energy are granted by the Provl. Govt. under the provisions of section 3 of the Indian Electricity Act, 1910. Under clause (d)(i) of sub-section (2) of that section such a license may prescribe the terms as to the limits of price to be charged in respect

of the supply of energy. Under clause (f) of that sub-section , the provisions contained in the Schedule are to be deemed to be in - corrpotated with and to form part of, every license granted under Pt. II. Clause XI in the Schedule to the Act provides that the prices charged by the licensee for energy supplied by him shall not exceed the maxima fixed by his license, Provided that, if, at any time after the expiration of seven years' from the commencement of the license, the Provl. Govt. considers that the maxima so fixed should be altered, it shallrefer the matter tothe Advisory Board, and if the ~~matix~~ Board recom mends any alteration, may make an order in accordance with such recommendation. It would be seen from the proviso that the matter is referre d to the Advisory Board with view tosuggest alterations in th maximam rates fixed by the license. The Board can therfore suggest alterations in the rates themselves by recommending rductionor addition to the rates. But ~~xxx~~ it does not ap pear that in the absence of any provision in the Act, theBoard can suggest that the license should be authorised to charge interest if thebills are not settled within a certain period. The answer to the question raised appears thereforeto be in the negative .

3. A copy of the license has bot been forwarded by the P.W.D. but it does not appear

Office of the R.L.A.

What is to be fixed or altered in accordance with the recommendation of an Advisory Board under clause XI of the Schedule to the Indian Electricity Act, 1910, (Act IX of 1910) are the maxima rates to be charged by the licensee. These fixed only with reference to the maxima rates to be energy supplied by the licensee. They cannot be made to vary withreference to the date of payment of the charges by the consumer. The suggestion referred to in paragraph 1 at page 31 ante does not therefore appear to be in order. If the Board so desires, the maximum rate recommended by it may be inclusive of therelevant percentage which it considers reasonable for the licensee to charge in respect of such delayed payments.

Id/- P.N.M.
dt/- 3/3/

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 104 -Confl., dated 3rd March 1941.

R. V.VK. 30/3/58/ 50.

Office of the R.L.A.

The question for the R.L.A.'s consideration is whether the Government can legally refuse to grant a license to the applicant Mr. Patel for the supply of electrical energy.

2. It is no doubt true that under section 3 of the Indian Electricity Act of 1910 it is within the discretion of the Government to grant the license. But, in the present case, Government has already offered to issue to Mr. Patel a license subject to the conditions set out in the draft license. As will appear from the papers, Mr. Patel has accepted those conditions in writing. Rule 19 of the Indian Electricity Rules, 1937 framed under section 37 of the Indian Electricity Rules, 1937 provides that on receiving an intimation in writing from the applicant that he is willing to accept a license in the form approved by the Provincial Government, the Provincial Government shall publish the license by notification in the local official Gazette together with the statement that it has been granted. This rule is mandatory and consequently it would not now be legal for Government to refuse to issue a license on the ground that Mr. Patel is likely to be only an ostensible licensee since he is not in a position to finance the scheme. Moreover, any assignment of the license would not be valid without the consent of Government. (See section 9. sub-section(2) of the Act). The apprehensions expressed by the Electrical Engineer to Government in paragraph 3 of his endorsement at page 345 ante would not, at this stage, justify a refusal of the license proposed to be grnated. The Government has ample powers under section 4 of the Electricity Act to revoke the license after its grant if the licensee fails to make the required deposit or is not

in a position fully and efficiently to discharge his duties and obligations or commits any breach of the conditions imposed .

Id/- P.N.M.
Remembrancer of Legal Affairs.

U.R. to P.W. D. No. 1070 , dated the 4th February 1941.

V.VK. 20/3/36/ 3C.

Office of the R.L .A.

The questions for consideration of the Remembrancer of Legal Affairs are :-

(1) Whether under clause V(1)(b) of the Schedule to the Indian Electricity Act, 1910, a local authority has to tender a contract binding itself to take a supply of energy for not less than seven years to such amount as will in the aggregate produce annually a reasonable return to the licensee.

(2) Whether in case of dispute as regards such guarantee, the matter can be referred to arbitration under sub-clause (2) of clause V of theSchedule to the Act.

2. Question No. 1.- In his last opinion No. 11040 , dated 16 the December 1940, the Remembrancer of Legal Affairs referrred to sub-clause (a) of thefirst proviso of clause VI(1)(and not to clause V(1)(a) as stated by the Electrical Engineer at page 83 ante) of theSchedule to the Indian Electricity Act, 1910, on the assumption that distributing mains had already been laid down in the street; but in view of the report of the Electrical Engineer at page 83 ante that assumption does not appear to be correct. Consequently clause V(1)(b) of the Schedule to the Act will apply and thePoona Suburban Municipality will have to tender a contract binding itself to take a supply of energy for not less than seven years for thepublic lamps to such amount as will in the aggregate produce annually, at the current rates charged by the licensee, a reasonable return to the licensee. The view taken by the Commissioner , Central Division at page 73 ante is correct.

3. Question No. 2 - Sub-clause (2) of clause V in the Schedule to the Indian Electricity Act, 1910., has no application to the present case as the difference or dispute now under reference is between the licensee and thelical authority and not between the licensee and any owners or occupiers making

a requisition under clause V.

Id/- P.M.W.
dt/- 27/3/

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 2847 , dated the 28th March 1941.

V.VI 30/5/56/

56.

1766
19/2/41/

Submitted with ref. to P.W.D. note dated 13th February 1941 at p. 66 ante.

2. These papers relate to the draft agreement between the Licensee the Ahmedabad Electricity Co. Ltd. and the consumers who apply for a sup ly of electrical energy required for industrial purposed and purposes incidental thereto. The conditions included in such agreement require the prefious sanction of the Provl. Govt. under sec. 21(2) of theIndia n Electricity Act, 1910(IX of 1910) . The draft agreement was scrutinised by the Solicitor to Govt. L.D. (vide his U.O. to P.W.D. No. 19763 dated 7-12-1940).

3. The question for consideration of the H.L.A. is whether the revised proviso to condition No. 3 and thenew condition No. 8 (a) proposed by the licensee in the draft agreement at pp. 45-58 ante are in order.

4. Section 21(2) of theElectricity Act lays down inter alia that a licensee may, with the previous sanction of the Provl. Govt. make conditi ns not inconsistent with that Act or with his license or with any rules madeunder that Act, to regulate his relations with persons who are or intend to become consumers. Under clause VI(1) of the Schedule to the Act Electric Inspector is competent to give sufficent time to the licensee to enable him to suply the necessary energy to the consumers . The revised proviso to conditi ns No. 3 at p. 47 ante which leaves it to the Electric Inspector to decide whether the licen-

sufficeint surplus power and mains capacity to meet the demand for increased supply of energy would be covered by the provisions of clause VI(1) of the Schedule and is therefore in order.

3. As regards the new conditions No. 8(a) it may be noted that themeaning of the words "in order to safegaard supply to any person firm or company to whom or to which the company is at the date hereof under contract to give supply " is not clear . In their letter dated 6th February 1941 at p -61 ante the Agents of theLicensee have not given the reasons for insertidg these words beyond thebare statement that this is a "war clause ". Under section 22 read with clause VI of the Schedule, the Licensee is bound to supply energy to any person on requisition on the same terms as those on which any other person in the same area is entitled to in similar circumstances to a corresponding supply. It will not therefore be possible to make any discrimination between theconsumers. f the intention is to redume the supply of energy to any person in order to safeguard proportionate supply to other consumerw thewording of the condition may be revised as follows, namely :-

"8(a) If at any time or times by reason of its ibability to obtain further plant owing to the present hostilities in Europe the Company considers it necessary to interupt or discontinue supply under this Agreement in order to safeguard corrsponding supply to any person etc. ".

If however theintention is to give prefer - ence to certain consumers who are indifferent

Office of the R.L.A.

The revised proviso to clause 3 and the new clause 8(a) as proposed are free from legal objection and may be approved There is nothing in the Act or the license of the Company contrary to the proposed amendment . Moreover, these provisions have to be read and construed as subject in all xxxxxxxxx respects to the terms of the license and of the Act and the Rules (See clause 14) and consequently will not in any way diminish the licensee's rights and liabilities under section 22 or clause VI(1) of the Schedule to the Indian Electricity Act, 1910.

Id/- P.N.M.
dt/- 1/5/

Remembrancer of Legal Affairs .

U.R. to the P.W.D. No. 3956 dated the 2nd May 1941.

V.VK. 31 / 5/ 56/

5C.

Submitted.

Attention is invited to the report from the Electrical Engineer to Govt, at pp. 53-57 ante. It appears that the Tata Power, Company, Ltd., has been granted a license known as the Nila Mula Valley (Hydro-Electric) License, 1921, under the provisions of the Indian Electricity Act, 1910, for supplying energy within an area including inter alia the municipal limits of the town of Panwel. The Panvel Taluka Electrical Development Co., Ltd. are also the assignees of a license known as the Panvel Taluka Electric License, 1930. The Panvel Taluka Electrical Development Co. is receiving the supply of energy from the Tata Power Co. and an agreement under subclause (1)(b) of clause IX in the Schedule to the Indian Electric ity Act, 1910, has been entered into. A copy of the agreement is at pp. 27-51 ante. Clause (1) of the agreement provides that it shall be read and construed in all respects in conformity with the Licenses and with all the provisions of the Act and therules. Under clause (II) it was to remain in force for a period of 10 years with effect from 6-11-1930. The period of the agreement is now over. The Panvel Co. contends that it is entitled to receive the supply of energy after the expiry of the period of the agreement at the current rateed and that clause IX(1)(b) in the Schedule to the Act is not now applicable. The Company has forwarded a copy of theAdvocate General's opinion obtained by them in connection with another case. The contention of the Tata Power Co. is that it is prepared to supply

energy provided the Panvel Co. enter into an agreement to receive the supply for a period of seven or ten years at the rate of Rs. 4 tariff and subject to the payment of a minimum consumption bill of Rs. 1,2000/- per month . In its letter dated 3-12-40 the Panvel Co. requested Govt. to intervene in the matter. Govt. informed theCompany that as the matter was one for a settlement between thePanvel Co. and the Tata Power Co. they could not take any action in respect thereof. The Panvel Co. againrequested Govt. to intervene in the matter contending that thequestion involved was one of thelegality of thedemand made by the Tata Power Co. but Govt. have declined to express any opinion. However at the suggestion of the Electrical Engineer to Govt. the R.L.A. is requested to advise in the matter. In these circumstances the question for the consideration of the R.L.A. is whether the Panvel Electrical Development Co. will have to enter into an agreement with the Tata Power Co. under clause IX(i)(b) in the Schedule to the Act if it desires to continue to ~~xxxxxx~~ receive a supply of energy as a distributing licensee.

2. The view taken by the P.W.D. so far that the dispute is essentially one between the Tata Power Co. and the Panvel Electrical Development Co. appears to be correct.

3. The contention of thePanvel Electrical Development Co. that after theexpiry of the period of the agreement dated 20/7/1933, it cannot be made to enter into a fresh agreement if it desires to continue to receive a supply of energy for the purpose of distribution does not however appear to be correct

Office of the R.L.A.

The dispute is between thebulk licensee and distributing licensee regarding interpretation of thier rights under clause IX of the Schedule to the Electricity Act, 1910. The distributing licensee plaads that he is entitled to require supply in future without fresh requisition and without alteration in the existing charges, as he has alteady made requisition under clause IX(1)(a) and thereupon at therequirement of the buld licensee, also passed an agreement in writing under clause IX(1)(b) and as under clause IX(1)(4) he has given no notice to discontinue supply The bulk licansee on the other hand contends that the agreement under clause IX(1)(b) having terminated,he is not bound to supply at all, but that the distributing licensee must requisition supply afresh and pas a fresh agreement (wigh altered charges) under clause IX(1)(b). Though Government is not concerned directly in the dispute , the Remembrancer of Legal Affairs is requested to advise on the merits as well as on theprocedure to be a dopted in this case.

2. The liability of thebulk licensee to supply energy arises under section 22 of theAct, and where energy is supplied to a distributing licensee, theliability is modified to thextent of clause IX(1)(b). Since in this case clause IX(1)(b) is acted upon, no fresh requisition is necessary (except when excess supply over ma ximum rate is required under clause IX(1)(c). Thus the liability of the bulk licensee to supply energy at the old rate will continue . The opinion of theAdvocate-General at p. 1 that on theexprity of theterm of the agreement under clause IX(1)(b), thedistributing licensee is an ordinary consumer who could enforce supply from thebulk licensee under section 22 seems well grounded In that case , evidently section 23 will govern the fixation of charges which means

that the charges are liable to be altered within the limits of thelicense etc.

The procedure thereofe ¶ appears to be this: If the bulk licensee contests his liability to continue supply on the ground that there is no fresh agreement under clause IX(1)(b), the dispute will be settled by arbitration under clause IX(1)(d) of the Schedule .If he however he agrees to supply but fixes fresh charges within theprescribed limits under sections 22 and 23 of the Act, and thedistributing licensee refuses to pay thealtered charges, the procedure of section 24 will apply.

Id/- P.N.M.
Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 4663 , dated the 22nd , May 1941.

V.v.k. 31/5/56/ 5C.

R.I.No. 4185/7/5/41.

Submitted.

The Bagalkot Electric License was granted in the year 1932 to one Mr. Narayan Dattatraya Nerurkar. In 1934 Government granted its consent under sub-section (2) of section 9 of the Indian Electricity Act, 1910, to the transfer of that license to Messer. Gugwad & Co. a firm consisting of four gentlemen Messrs. Gugwad, Veersheti, Talikoti and Dandavati subject to theobligations imposed by the said license . It appears now thesaid firm of Gugwad & Co. is dissolved with effect from 9th April 1941 by an order oc the First Class Sub-Judge, Bijapur, who has appointed on Mr. C.B.Arballi as Receiver witha direction take possession of the suit firm and manage it and wind up the partner'ship. The Receiver has now applied under section 9(2) for consent of Government to transfer the license . The P.W.D. proposeto ask him to report the name of the person to whom he proposes to transfer the undertaking before consent is granted. The R.I.A. is requested to advise in the matter. The question for consideation s whether Government can consent to transfer under sec. 9(2) of the I.E. Act on the application of the Reveiver

2. Sub-section (2) of section 9 of the Indian Electricity Act, 1910, provides that the licensee shall not at any time assign his license or thansfer his undertakeing or any part thereof, bh sale, mortagage, lease, exchang or otherwise without theprevious consent in writing of the Provincial overnment. By G.R. P.W.D. No. 7996 /27 dated the 25th January 1934

Government consented to the assignment of the license and thetransfer by Mr. Nerurkar of the undertaking to Messrs. Gugwad and Co. a firm consisting of Mr. Gugwad and three others. The firm appears to have been dissolved by the ourt under section 44 of the ndian Partner ship Act , 1932 . Under section 47 after the dissolution of a firm the authority of each partener to bind thefirm and theother mutual rights and obligations of ~~the~~ partners, continue notwith-standing ~~the~~ dissolution, so far as may be necessary to wind up theaffairs of the and to complete trasnsactions begunn but unfinished at the time of the dissolution. In this case the Court has appointed Mr. Arballi to take possession of the firm and magage it and wind up the partnership concern. Mr. Arballi is thus acting as an Agens of partners and consequently there does not appear any objection to entertaining the application made by him for co sent under section 9(2) There is, therefor,no objection to making theen enquiry of him as proposed by the P.W.D.

Sd/- J.R.D.
dt/- 21/5/

A.S.

The papers may be seen and returned .) A.

Id/-
dt/- 31/5/

L.L.R. As at A.

Id/-N.K.D.
dt/- 2/6/

R.L.A. Id/-P.M.M.
3/6/

U.O.R. to P.W.D. No. 5128 date of 6/6/1941.

V.v.k. 31/5/56/ 5C.

Office of the R.L.A.

The Collector proposes to recover the arrears of electricity duty from the licensee Company whose license Government have decided to revoke with effect from 3rd July 1941. The duty is recoverable from the Company as arrears of land revenue under section 9 of the Bombay Finance Act, 1932. The Collector's proposal is to make the recovery by the sale of the Company's moveable property already attached. The question referred to the R.L.A. is whether the proposed sale will be subject to the leagal incidents contained in section 5(e) of the Electricity Act, 1910.

2. Section 5(e) of theAct relates to a purchase effected under clauses (b), (c) and (d) of section 5, in other words, to a purchase of theentire "undertaking" of the licensee whosse license is being revoked. In the present case, the undertaking is not proposed to be sold, but only some moveables belonging to the licensee Company. The sale is not therefore subject to the leagal incidents of section 5(e) of the Act.

Id/-P.N.M.
dt/- 23/6/

Remembrancer of Legal Affairs.

Id/-
dt/- 23/6/41/

U.R. to P.W.D. (through R.D. & F.D.) No. 5617 , dated the 25th June 1941.

M. v.k. 31/5/56/ 5C.

R.I.No. 6534
25/7/41/

Submitted.

By G.N. P.W.D. No. 2431/36 dated 19-3-1940 Govt. granted the Anand Electric license to one Mr. Ranchhodlal Gangaram Patel in exercise of thepowers conferred by section 3(1) of the Indian Electricity Act, 1910, on theterms and condition stated therein. Under clause 5(c) of thelicense the licensee was required to commence the supply of energy within eighteen months of the date of the license. Under clause 5(d) he was required to submit reports of progress made in the execution of the works. The licensee has been submitting reports as required by clause 5(d). The supply was required to commence from 18th September 1941. It appears now that the licensee Mr. Ranchhodlal has since died and one Mr. C.R.Patel who states that he is his further has applied to the Electrical Engineer with a request that any further correpondence in respect of the license might be entered into with him. The R.L.A. is requested to advise whether there is any legal objection to Govt. carrying on correspondence with Mr. C.R.Patel.

2. The answer to the question raised by the P.W.D. is in the affirmative. The license that was granted by G.N.P.W.D. No. 2431/36 dated 19/3/1940/ was granted to Mr. Ranchhodlal Gangaram Patel in his individual capacity. As pointed out in R.L.A.'s opinion No. 2338 dated 17/4/1936, licenses are granted on the grounds of personal suitability and a legal representative of a licensee cannot be said to be a 'licensee'

within the meaning of theAct. Clause 2(3) of the license further interpretus the word "licensee" to mean and include the said Mr. Ranchhodlal G. Patel and his p ermitted assigns - that is those permitted under sub.-section (2) of section 9 of the Act by Govt. it is clear therefore that Mr.CCR3.Patel who has approached the Electrical Engineer is not a licensee and he should not be recognised as such for purposes of the Sandnd Electric License.

Sd/-D.N.Deshamukh
dt/- 30/7/41/

s.s. Clause 2(3) of the License granted to the deceased Ranchhodlal Gungaram Patel for the sup ply of ~~xxxxxxxxxxx~~ energy at Sanand Eldefinces the term "~~xxxxx~~licensee" as meaning & including the said Mr. Ranchhedlal Gangaram Patel & his permitted assigns . In the absence of any assignment bulk the sanction of Govt. and in view ~~xx~~ the fact that the license is clearly granted Mr. R.G.Patel himself and not to his firm . Mr. C.R.Patel , the present ap plicant, cannot be considered to be a license even though he should prove to be a partner of the deceased Ranchhadlal Consequently it would not be legal for the Electrical rougineer to Govt. to enter into correspondance with Mr. C.R.Patel as a licensee.

Id/- R.T.K.
dt/- 1/8p

A.L.R. As in Ass. Note. Id/-M.K.P.
dt/- 5/8/

R.L.A. Id/- P.N.M.
dt/- 6/8/

V.VK. 31/8/56/

5C.

Office of the R.L.A.

Pl. see also R.L.A.'s No. 8242 dt/-19/9/41. The Adv. Gene.has taken a diffrent view (pl. see his opinion 8/11/1941).

Clause 2(3) of the license granted to the deceased Ranchhodlal Gangaram Patel for the supply of energy at Anand defines theterm "licensee" as meaning and including the said Mr. Ranchhodlal Gangaram Patel and his permitted assigns,.In the absence of any assignment with the sanction of Government and in view of the fact that the lecensee is clearly granted to Mr. R.G.Patel himself and not to his firm, Mr. C.R.Patel thepresent applicant, cannot be considered to be a licensee ever theough he should prove to be a partner of the deceased Ranchhodlal . Consequently it would not be legal for the Electrical Engineer to Government to enter into correspondence with C.R.Patel as a licensee.

Id/- P.N.M.
dt/- 9/8/

Remembrancer of Legal Affairs.

Id/-N.G.A.
dt/- 8/8/41/

U.R. to P.W.D. No. 7069 , dated the 11th August, 1941.

V.VK. 31/5/58/

SC.

Office of the R.L.A.

Mr. Karlekar is a non-licensee supplying energy under the provisions of Chapter III of the Electricity Act, 1910, with the previous sanction of Government and in accordance with the conditions fixed in the sanction. The sanction is granted under section 28(1) of the Act and appears in P.W.D. Notification No. 9091/27 dated 23rd May 1935 at pages 935 to 938 of the Bombay Government Gazette dated 30th May 1935. Condition VI of the sanction lays down that the provisions inter alia of Clause VI of the Schedule to the Act shall apply to Mr. Karlekar as if he were a licensee. Clause VI of the Schedule to the Act makes it obligatory on the licensee save in so far as he is prevented from doing so by cyclones, floods, storms or other occurrences beyond his contro, to continue to supply energy in accordance with requisitions. It appears that Mr. Karlekar has often failed to supply energy as a result of breakdown in the plant and defects in the engines. The question refered to the R.L.A. is whether Mr. Karlekar can be prosecuted under section 42(b) or section 47 of the Act for such failure.

2. Section 42(b) of the Act prescribes the penalty for defective supply in breach of clause VI of the Schedule and of the conditions of the licence on the part of a licensee. It is true that Conditions VI of the sanction makes Clause VI of the Schedule as regards continued supply applicable to Mr. Karlekar as if he were a licensee, but Condition VI does not make the penal section 42 applicable to Mr. Karlekar in a similar way and hence Mr. Karlekar cannot be prosecuted under section 42 for defective supply in breach of the conditins of the sanction, read with Clause VI of the Schedule.

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2., Section 47 of the Act penalises default (not otherwise provided for) in complying (1) with any of the provisions of the Act, or (2) with any order issued under it, or (3) in the case of a licensee with any of the conditions of his licence. Breach of a conditionin the sanction granted to a non-licensee would appear to fall under the second variety of default as the sanction with attached conditions is an order issued under section 28(1) of the A t. Consequently Mr. Karlekar would presumably be liable to be prosecuted for an offence under section 47 of the Act. (see note under section 47 at page 305 of Meares on "the Law relating to Electrical Energy in India and Burma"). It is doubtful if Mr. Karlekar would be protected by the saving provision in Clause VI of the Schedule. The saving applies when the supply is prevented by cyclones, floods , storms ,or other occurrences beyond the licensee's control. The words "other occurrences " will be construed, ejusdem jeneris with cyclones floods and storms, to mean an act of God ' or civil war and acts of the Kings' enemies' or ' force majeure The words may or may not cover the case of a mechanical accident caused by breakdown in the plant and defects in the engines. t is possible to regard the failure of supply in such a case as due o an old and worn out plant or engine or to lack of proper management for whidh Mr. Karlekar is responsible, or else to inevitable accident 'force majeure' beyond Mr. Karlekar control. Failure of supply due to a defective cable was held as due to inevitable accident in Sub Insurance Co. v. Public Corporation (quoted at page 301 of Meares). The point, however is not quite free from doubt and may involve facts as well as law

Id/-P.N.M.
dt/- 5/8/

Remembrancer of Legal Affairs.

No.8159/22-8-41.

Submitted

Attention is ~~xxxx~~ invited to R.L.A.'s opinion No. 7069, dated the 11th August 1941, at page 223 and to notes at pp. 225-227 ante . In that opinion the R.L.A. had advised that Mr. C.R.Patel , could not be considered to be a licensee. The license was granted to Mr. R.G.Patel ~~himself~~ himself and not to his firm. The following questions are now referred to the R.LA. for consideration:

(1) whether ~~Mr. C.R.Patel after~~ on his obtaining such a certificate, he is authorised in law to assign thelicense with the consent of the Provincial Government under sec. 9(2) of the Indian Electricity Act, 1910, and

(3) whether there is any other remedy to over come the difficulty in this case.

2. Both the first and second question are concluded by the R.L.A.'s previous opinion No. 7069 dated the 11th Aug. 1941. ~~The xxxx

Mr. C.R.Patel , obtains a succession certificate, that will not make him a licensee within the meaning of the Indian Electricity Act.

3. or the same reasons, his obtaining a succession certificate will not authorise Mr. C.R. atel to assign the said license under sub-sec. (2) of sec. 9 of the Act. That subsection empowers the licensee himself to assign a license.

4. The next question is whether there is any remedy to meet such situation as has arisen in this case (vide C.E.L. Dy. Secy's note dated 19/8/41 at p. 2.5 ante). The only remedy appears to be to grant a fresh license under sec. 3, or to grant sanction on conditions under sub-sec. (1) of sec. 28 of the A--

Sd/-
dt/- 29/7/

A.S. Even though Mr. C.R.Patel obtains a succession certificate, the legal position stated in R.L.A.'s last opinion No. 7069 dated in 11th August 1941 would not be affected. Mr. C.R.Patel connot be allowed to proceed with the worked untill unless he has obtained a license under section 3 or is (granted section under section 28(1) of the Indian Electricity Act, 1910. In this connection attention invitted to R.L.A.'s U.O.No. to P.E.D.No. 2338 dated the 17/4/1936.

Id/-P.T.K.
dt/- 31/8/

A.L.R.

I am inclined to agree but before I pass on the file to the R.L.A. I should like to see the opinions referred to in Mr. Deshmukhs' note dated 30/7/41/ underlying R.L.A.'s ø 7069 dt. 11/8/41 particularly No. 2338 dt. 17-4-36 & any later opinion in which that opinion ø was followed.

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Even though Mr. C.R.Patel obtains a succession certificate, the legal position stated in R .L.A.'s las t opinion No. 7069 , dat ed the 11th August 1941, would not be affected. Mr. C.R. Patel cannot be allowed to procee d with the work until and unless he has obtained a licens e under section 3 or is granted sanction under section 28(1) of the Indian Electricity Act, 1910, In this connection attention is invited to R.L.A.'s U.R. to P.W.D: No. 2338, dated 17th April 1936.

Id/. P.N.M.
dt/- 17/9/

Remembrancer of Legal Affairs.

Id/-
dt/- 17/9/41/

U.R. to P.W.D. 8242 , dated the 19th September 1941.

V.v.k. 31/5/-6/

SC.

Submitted.

Government Order No. 4940/36 dated 28th Feb. 1941, was issued in pursuance of the provisions of the first proviso to clause XI of the Schedule to Indian Electricity Act, 1910, and in accordance with the recommendations of the Advisory Board constituted under section 55 of the Act, for the area covered by the Poona Electric License 1917. The order altered the maxima charges for the supply of energy fixed by the license and specified in the Second Annexure thereto. A Copy of the order is at flag B. The company now feels some practical difficulties in determining or measuring "B.H.P." mentioned in clause (3) of the order in as much as the brake horse-Power of moter output bears no fixed relation to the units of the electrial power unit. It is therefore proposed to amend the order (flag B) on the lines indicated in the letter of the Electrial Engineer to Government at p;7 ante. The amendments suggested substitute the words "E.H.P" for E.H.P. or H.P. at certain places in clause (3) of the Order. It is pointed out by the Electrical Engineer to Government that thesuggested alterations do not make any difference in the Coy's rates byt only clarify the same. The H.L.A. has been asked to advise whether the Government Order No. 4940/36 dated 28/2/1941, which practically now forms part of the License, can be amended as proposed or whether the company may be asked to make a formal application to Government under sec. 4(3)(b) of the I.E. Act

for an amendment of the license and to follow the prescribed procedure in the matter.

3. As the Government Order No. 4940/36 dated 28/2/41 fixing the maxima charges has been issued under the first proviso to clause XI of the Schedule to the Act, no further order altering themaxima fixed by the said order can be made until the expiration of a period of five years. (Vide the second proviso to the clause XI). It is stated that the suggested alterations will not make any difference in the company's rates, but will only clarify thesame. If so, the suggested alterations would not account to alteration of the maxima fixed by the order amending theorder dated 28/2/41. on the lines suggested. The order dated 28/2/41/ can therefore be amended an theproposed lines.

Sd/-
dt/- 26/9/41/

I think an amendment of the licensse would be necessary.

It is true that the proposal in the present case does not involve any alteration in the maxima rates and consequently the second proviso to clause XI of the Schedule to the Indian Electricity Act,1910, has no application, but the Govt order No. 4940/36, dated he 28th Feb. 1941, issued in pursuance of he first proviso to clause XI of theSchedule to the Act altering the maxima charges for the supply of energy, now forms part of the license and consequently

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The alterations ordered unde the Government Orde No. 4940/36 , dated 28th February 1941, now form part of of the license. Consequently to carry out the proposed laid down in section 4(3)(b) of the Indian Electricity Act, 1910.

Id/-P.N.M.
dt/- 3/10/

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 8720, dated the 6th October 1941.

V.v.k. 31/5/56/ 5C.

Office oef the R.L.A.

Statmeest of the Case.

By Government Notification, Public Works Department No. 2431/36, dated the 19th March 1940 Government granted the Sanand Electric License to one Mr. Ranchhodlal Gangaram Patel in exercise of the Indian Electricity Act, 1910, on the terms and conditions stated therein. Under clause 5(e) of thelicense thelicensee was required to commence the supply of energy within eighteen months of the date of thelicense. Under clause 5(d) he was required ~~xxxxxxxxx~~ to submit reports of progress made in the execution of the works. The license has been submitting reports as required by clause 5(d) .The supply was required to commence from 19th September 1941. The licensee Mr. Ranchhodlal has since died and one Mr. C.R.Patel who states that he is his partner, has applied to the Electrical Engineer with arequest that any further correspondence inrespect of thelicense might be entered into with him. On the Remembrancer of Legal Affairs, being requested to advise whether there was any legal objection to Government carrying on correspondence with Mr. C.R.Patel , the Remembrancer of Legal Affairs in his opinion No. 7069, datd the 11th August 1941 advised

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that in the absence of any assignment with the sanction of Government and in view of the fact that the license was clearly granted to Mr. R.G.Patel himself and not to his firm, Mr..C.R.Patel the present applicant, could not be considered to be a licensee even though he should prove o be a partner of the deceased Ranchhodlal and t hat consequently it would not be legal for the Electrical Engineer to Government to enter into correspondence with Mr. C.R.Patel as a licensee. In his subsequent opinion No. 6242, dated the 19th Septemeber 1941 the Remembrancer of Legal Affairs stated that the above position would not be affected even if Mr. C.R.Patel obtained a succession certificate, and t hat Mr.C.R. atel could not be allowed to proceed with the work until and unless he obtained a license under section 3 or was granted sanction under section 28(1) of the Indian Electricity Act, 1910, This opinion was supported by the view expressed by theR.L.A. in his opinion No. 2338, dated the 17th April 1936. In that opinion, theR.L.A. had advised t hat the heirs, successors and executors of a deceased licensee could not be termed 'licensees ' within the meaning of the Indian Electricity Act, 1910. The R.L.A. had further observed that a license is generally granted on ground s of personal suitability. This view was based on t he

definition of the expression 'licensee' in Annexure III appended to the Indian Electricity Rules, 1937, which provides that it shall mean and include the applicant and his permitted assigns only.

It is true the Remembrancer of Legal Affairs had advised in his opinion No. O.Electric I, dated the 13th June 1928 that the executor appointed by the deceased licensee was bound to carry out the undertaking (Please see Mr. Rajadhyaksha's note dated 8th June 1928 at p. 9 of the File Electric I/1928, slip Q). The main basis for that view was that thecontract to supply energy was not a contract of such a personal nature that the death of the licensee would have operated to put an end to it. But in view of the Remembrancer of Legal Affairs' opinion No. 2338, dated the 17th April 1936, the authority of the previous opinion of 1929 appears to have been greatly shaken. Sub-section (2) of section 9 of the Act also authorizes the licensees alone to assign the license or transfer the undertaking with the consent of the Provincial Government.

As there is an apparent conflict between theview expressed by the Remembrancer of Legal Affairs in his opinion No. O.Electric I, dated the 15th June 1928 and the subsequent opinions of 1936 and 1941, the Advocate General is requested kindly

to advise whether a legal partner or an executor of the Will of a deceased licensee can be deemed to be a licensee within the meaning of the Indian Electricity Act, 1910, and whether he can be allowed to proceed with the work of thelicense. If the answer to this question is in the negative , the Advocate General is also requested to advise whether there would be any remedy to overcome the difficulty.

Id/- P.N.M.
Remembrancer of Legal Affairs.

U.R. tothe Advocate General, Bombay, No. 9296 dated the 28th October 1941.

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No.

The license in the present case was applied for on the 25th of April 1938 by theindividual Ranchhodlal, who, it appears from the communications made, was theproprietor of the International Electric Equipment Co. Pursuant to this application thelicense was granted by the Notification dated the 19th of March 1940 to Ranchhodlal. It appears that after the grant of the license, Ranchhodlal still continued to be the proprietor of the business above referred to. It further appears that by a partnership deed dated the 8th of May 1941 he admitted C.R. atel as a partner in the concern referred to above

2. On the facts stated above , it is clear that C.R. Pate l as a partner would have no interest in the licensee. Ranchhodlal could have , in his life time, with the previous consent in writing of Government under clause 17 of the license, have assigned the license to the partnership. On such assignment C. R.Patel the partner would have obtained an interest under the license.

3. Under the ordinary law a license is not revocable if the licensee acting upon thelicense has executed works for permanent character and incurred expenses ~~xxx xxxx

5. It would be competent to the Government to allow the executors in whom theinterest in thelicense has vested to carry on the works pending such assignment.

Sd/-

Advocate General

8/11/41/

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SC.

Office of the R.L.A.

The Advocate General was consulted in the matter. A cop y of his opinion dated 8th November 1941 is forwarded herewith.

Id/-P.N.M.
dt/-11/11

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 9733 , dated the 11th November 1941.

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SC.

R.L.A.'s Office

The Kapadwanj Electric License granted to .. U.A. Bakerbhai was revoked by Government under section 4 of the Indian Electricity Act, 1910, with effect form 3rd July 1941 and a notice of revocation was served both upon the licensee and the Kapadwanj Municipality under section 5(a) After receipt of notice on 3rd may 1941 the Kapadwanj Municipality resolved on 14th une 1941 to purchase the undertaking and after applying to the Collector on 26th June 1941 for written consent of Government, it served a notice on the licensee on 30th July 1941 under section 5(b) requiring him to sell the undertaking .It was stated in the notice that the necessary consent of Government was applied for an would be forwarded to him in due course. The written consent of Government , however, has not hither to been granted by Government , The questions raised for the consideration of the R.L.A. are:-

(1) whether theservice of notice on the licensee under section 5(b) by the Kapadwanj Municipality without the writtenconsent of Government 10 valid; and

(2) whether the consent applied for can now be given by Government.

2. Section 5(b) of theIndian Electricity Act, 1910, inter alia provides that where a notice has been served on a local authority under clause (a), the local authority within three months after the service of the notice, and with the written consent of the Provincial Government , by notice in writing require the licenseeto sell etc. It is clear from this provision that thenotice requiring the licensee to sell must be served (1) within three months and also (2) with he written consent of theProvincial Government. In thepresent case, no dount, the notice was served on the licensee under section5(b) within three months after the service of the notice unde clause (a) ,

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but the consent of Government was not obtained within three months either before or after the notice was served on the licensee under section 5(b) Consequently the noticeserved on the licensee does not fully comply with the requirements of section 5(b) and is on that account invalid. Since the period of three months within which the Municipality, with thewrittenconsent of Government can require the licensee to sell, has already elapsed, thegrant of the written consent now by Government would be or no avail to the Municipality andwould not validate the notice already served on the licensee.

Id/-P.N.M.
dt/- 23/1/

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 10093 dated 24 -11- 1941 .

V.v.k. 31/5/56/

50.

R.I.No. 11418
10/12/1941.

Submitted .

2. By an agreement dated the 1-2-1940, between the Poona Electric Supply Co. Ltd. and Govt. the Company has agr ed to supply energy at the Go vt. House, Poona the Yerawda Power House and t he Mental Hospital at the reates mentioned in clause 5. The Poona Electric Supply Co. was granted the Poona Electric License in 1917. In April 1940, Govt. referred t o the Advisory Board constituted under section 35 of the Indian Electricity Act, 1910, the question of alterations in the maxima charges for he supply of energy fixed by the license, under theproviso to clause XI of the schedule t o theAct, and by G.N. P.W.D. No. 4940/36 dated the 28-2-1941, directed that the maxima charges should be altered with effect form 1-5-1941, in a ecordance with therecommendations of the Board. It is now noticed y theElectireal Engineer to Govt. that the rates specified in the agreement dated the 1-2-1940 are higher than the maxima sanctioned in G.N. .W.D. No. 4940/36 , dated the 28/2/1941,.The Company was requested to r evise the rates byt has declined to do so. The E.E. to Govt. there fore proposes t hat the a greement be terminated with effect from the 3-5-1941, the idea being that with effect from that date charges will be paid according to the revised sanctioned rates. Secy. P.W.D. doubts whether Govt. can pay reduced rates with effect form last May so long as the agreement stands. The R.L.A. is therefore requested to advise in thematter . The questions that arise for the consideration

...sideration of the R.L.A. are:-

1) whether it is necessary to terminate the agreement dated the 1-2-1940, and

2) whether Govt. can recover the overpayment made.

2. Clause XI in the Schedule to the Indian Electricy Act, 1910, provides that the prices charges by the licensee for engery supplied by him shall not exceed the maxima fixed by his licensee, Provided, that , if at any time after the expiration of seven years from the commencement of the license, the Provl. Govt. considers that the maxima so fixed should be altered it shall refer the matter to an Advisory Board, and, if the Board recommends any alteration, may make an order in accordance with such recommendation which shall effect from such date as may make be mentioned therein. In the case of the Poona Electric Licenses the Board recommended certain alterations in the maxima rates and these rates were given effect from the 1-5-1941. by G.N. P.W.D. No 4946/36 dt 28-2-41 With effect form that date , therefore the licensee cannot recover at rates higher than those sanctioned in the Govt. Notifications, dated the 28-2-1941(Section 23 of the Act),. It is true that the agreement dated the 1-2-1940 mentions higher rates than those now sanctioned, But to that extent the agreement will have to be deemed to have been modified. It does not therefore appear necessary to terminate the agreement.

3. It is not clear from these papers whether the charges for energy supplied for m the 1-5-1941 have been paid by Govt. But it is presumed that they have been, the rates prescribed by clause 5 of the agreement are for energy consumed during

Office of the M.L.A.

It is true that the general residuary provision in clause 14 of the agreement with the Poona Electric Supply Company provides that in all matters not therein specifically provided for the provisions of the Indian Electricity Act, 1910, the Rules and the License granted to the Company shall be applicable. However, that will not enlarge the scope or validity of that agreement in matters which are otherwise restricted by the provisions of any law for the time being in force and binding upin the parties concerned e.g. the general restrictions imposed by the Indian Electricity Act or the Rules thereunder. Consequently the charges for energy agreed to in clause 5 of the agreement will be valid and legal only so far as they are otherwise in order i.e. could be lawfully levied by the Company without contravening the relevant provisions of section 23(1) and XI in the Schedule to the Indian Electricity Act, 1910 which enable the licensee to make only such charges as are agreed upon not exceeding the limits imposed by his license. Clause 11 of the agreement with the Company seems impliedly to e recognise this position by giving the consumer the option to determine the agreement or to accept service under the revised standard rate schedule s referred to in that clause. The effect of the change in the limits imposed in the license introduced by the P.W.D. Notification No. 4940/36 dated 28th February 19 would be to reduce correspondingly the charges agreed to in clause 5 of the agreement between Government and the Company, this modification being due to an indirect operation of law in pursuance of the provisins of section 23(1) of the Indian Electricity Act, 1910. It will not therefore be open

to the Company tocharge more than themaxima rates permissible under its license with effect from 1st May 1941 even though agreement has not yet been terminated.

Id/- P.N.M.
dt/- 12/12/

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 10762 , dated the 13th December 1941.

V.v.k. 1/6/1956/

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